IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5024 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL KODARBHAI RANCHHODBHAI

Versus

STATE OF GUJARAT

Appearance:

MR CB DASTOOR for Petitioners

MS MANISHA LAVKUMAR, AGP for Respondent No. 1

None present for ther Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 12/07/2000

ORAL JUDGEMENT

#. Heard the learned counsel for the parties. Rule. Ms.Manisha Lavkumar waives service of Rule on behalf of respondent-State.

#. The petitioner No.1 is the Deputy Sarpanch of

Madhavgadh Gram Panchayat, Madhavgadh, Taluka: Dehgam, District: Ahmedabad, hereinafter referred to as the Gram Panchayat. The petitioners No.2 to 5 are the members of the Gram Panchayat. The respondent No.5 is the Sarpanch of the Gram Panchayat. It is the say of petitioners that the respondent No.5 was committing irregularities in discharge of his official duties. It is the grievance of the petitioners that the respondent No.5 has given work of repairing of the school without inviting tenders from outside and has given work to the person of his relation. All members including the Deputy Sarpanch of the Panchayat raised voice against these irregularities and illegalities committed by the Sarpanch and as a protest thereof, they have given out that they will not attend the meeting. These irregularities of the Sarpanch were also brought to the notice of Talati-cum-Mantri as well as District Development Officer, Ahmedabad, by making representations on 27.3.97, 3.10.97, 23.1.97, 19.9.97 and 18.3.98. It is the grievance of the petitioners that none of the authorities aforesaid have taken any action on their representations. The respondent No.5, when the petitioners were not compromising with him for his irregularities committed, manipulated things. Instead of considering the representations made by petitioners, the Taluka Development Officer sent a letter dated 5.2.97 to the petitioners to show cause as to why action should not be taken against them under Section 57 of the Gujarat Panchayats Act, 1993 (hereinafter referred to as "the Act, 1993"). The petitioners, in paragraph 3.5 of the special civil application averred that the respondent No.5 issued notice dated 10.6.97 to all the petitioners as to why they should not be removed under Sec.57(1) & (2) of the Act, 1993 as they have not attended four consecutive meetings of the Panchayat. In the aforesaid notice, the Sarpanch has further ordered for removal of petitioners from the membership of the Panchayat. Against this notice-cum-order of respondent No.5, the petitioners approached respondent No.2 - District Development Officer. The respondent No.2, under its order dated 22.4.98, accepted the grievances made by petitioners and the notice-cum-order of the respondent No.5 was cancelled.

#. Though the Sarpanch being the head of the office of the Gram Panchayat, the grass root level authority, initially accepted the decision but later on challenged the same by filing revision application before respondent No.1 which came to be allowed under the order dated 18.6.98. Hence this special civil application.

#. The respondent No.5 only has filed reply to the

special civil application. The other respondents have not chosen to file reply to the special civil application.

#. In reply to the special civil application, the respondent No.5 admitted that he issued notice dated 10.6.97 to the members (petitioners) of the Gram Panchayat u/s.57(1) and (2) of the Act, 1993 without having knowledge of the provisions of law. After issuance of this notice dated 10.6.97, the respondent No.5 stated that the Deputy Development Officer, Ahmedabad, informed him vide his letter dated 19.6.97 that if the members remain absent in four consecutive meetings of the Panchayat without leave of the said Panchayat, action can be taken u/s.58 of the Act, 1993 and not u/s.57 of this Act. The respondent No.5 stated that after receipt of this letter of the District Development Officer, he issued notice u/s.58(1)(b) of the Act, 1993. This notice has been filed along with the reply as annexure-II. It is also stated that the District Development Officer has also issued notices to the petitioner for hearing mentioning Sec.58(1)(b).

#. Section 57 of the Act, 1993 makes a provision for removal of a member of the Gram Panchayat, Sarpanch or Upa Sarpanch, as the case may be, where he has been guilty of misconduct in discharge of duties or any disgraceful conduct or abuse his powers or makes persistent default in performance of his duties and functions under the Act or has become incapable of performing his duties. Section 57 further contemplates that the Member, Sarpanch, or as the case may be, Upa Sarpanch thereof, after giving him an opportunity of being heard and giving due notice in that behalf to the Panchayat and after such inquiry as it deems necessary, may be removed by the competent authority from the membership of the Panchayat. This power of removal of the member of the Panchayat, Sarpanch or Upa Sarpanch from the office does vest only with the competent authority. It is not in dispute that the power u/s.57 of the Act, 1993, is not available to the Sarpanch of the Gram Panchayat. It lies with the District Development Officer, what the learned counsel for the respondents states. So the action of the respondent No.5 to give this notice u/s.57 of the Act, 1993 to the petitioners was wholly without any authority of law. In reply, the Sarpanch admitted that he was not having perfect knowledge of the provisions of law as a result of which this mistake has been committed. The District Development Officer, Ahmedabad, has informed him that if action is sought to be taken against the petitioners for

their absence for four consecutive months from the meetings of the Panchayat without leave of the Panchayat it is permissible u/s.58 of the Act, 1993. Accordingly then a notice has been given by the Sarpanch u/s.58(1)(b) of the Act, 1993 to the petitioners. I am constrained to observe that this Sarpanch is not having knowledge of the provisions of the Gujarat Panchayat Act, 1993. Section 58 is also not understood by him. It cannot be also for the reason that he conceded that he has no perfect knowledge of the provisions of law. Because of lack of knowledge of law of person concerned, it is not gainsaid that manifold litigations which are otherwise avoidable, are coming up before this court. If the Sarpanch, Upa Sarpanch or the members of the gram Panchayat and officers of the State Government as well as other statutory authorities, Corporations, etc. have little knowledge of law, they may not pass illegal orders and as a result of which many litigations may not come up in the courts. Litigation in the country is increasing day by day which is clearly borne out from the graph thereof. One of the cause of this increase of graph of litigations in the country at the cost of repetition is to be stated is the lack of knowledge of law and more particularly the relevant Act and the Rules with which the concerned person has to deal with. To bring legal awareness amongst citizens is one of the important programme which is being conducted by the State Legal Services Authority throughout the State. Legal literacy camps for legal awareness are being held from time to time at the grass-root level and if we go by figures of legal literacy camps, which have already been held in good number. Despite of holding of these legal literacy camps and in some of the camps I had occasion to attend, the Sarpanch and the members of the Gram Panchayats were present but still that much of legal awareness amongst them could not be implanted. This affidavit has been filed by respondent No.5 on 12th September, 1998 and by that time despite of holding of that much of legal literacy camps we have not been able to make them know fundamentals of the laws related to them. In the legal literacy camps, variety of subjects are being taken but that may not be fruitful for the purpose, i.e. to literate these persons to the concerned Acts and Rules framed thereunder. In none of the literacy camps which I have attended the lecture on the subject of Panchayat Act etc. has been taken.

#. I endorse with the view of Brother Justice B.C.Patel which he has expressed in one of the judgments that because of this lack of knowledge of the relevant Act and Rules framed thereunder amongst these Sarpanchs of the

State, they are committing blunders after blunders. These blunders result in litigation after litigation and present is the case of that category. He, the respondent No.5, candidly admits that because of lack of knowledge of the Act, he has issued this notice to the petitioners u/s.57 of the Act. It also comes out from the facts of the case that the Deputy District Development Officer concerned is also not aware of the relevant provisions of the Act. To reduce the heavy pendency of the cases one of the important work which is to be undertaken is that simultaneously efforts are to be made to reduce inflow of cases in the courts. To achieve this most important thing is to organize camps for this class of persons at the grass root level and in which the concentration and emphasis should have been on the Acts and Rules which are concerning them. This is the matter concern of State Legal Services Authority and a copy of this judgment be sent to the Authority for perusal.

#. A Sarpanch, u/s.58 of the Act, 1993 has no power to remove the members or Upa Sarpanch of the Gram Panchayat. To further discuss the matter, I consider it to be appropriate here to reproduce that provision:

"58.(1) Any member of a village Panchayat who during his term of office--

(a) is absent for mor than three consecutive months from the village unless leave not exceeding four months so to absent himself has been granted by the Panchayat; or

(b) absent himself for four consecutive months from the meetings of the Panchayat without the leave of the said Panchayat:

shall cease to be a member and his office shall be vacant and thereupon the Panchayat shall as soon as may be inform him that the vacancy has occurred.

(2) Any dispute as to whether a vacancy has or has not occurred under this section shall be referred for decision to the competent authority, whose decision shall be final;

(3) Whenever leave is granted under sub-section (1) to a member who is an Upa Sarpanch, another member shall, subject

to the conditions to which the election of the Upa Sarpanch so absenting himself was subject, be elected to perform all the duties and exercise all the powers of an Upa Sarpanch during the period for which such leave is granted."

#. Any member of the village Panchayat, during his tenure of the office absents himself for four consecutive months in the meetings of the Panchayat without leave of the said Panchayat shall cease to be a member and office shall fall vacant and thereupon the Panchayat shall as soon as may inform him that the vacancy has occurred. There is a legal fiction created in this provision and that is, on absence for four consecutive months from the meetings of the Panchayat without giving leave a member shall cease to be a member of the Panchayat. For ceasing to be a member of the Gram Panchayat, no order is required to be made. It is by a legal fiction that result follows automatically. Ceasing to be a member of the Gram Panchayat is not removal of the member as what it is contemplated u/s.57 of the Act, 1993. As a consequence thereof, his office shall be vacant. This has to be informed by the Gram Panchayat to the concerned member. It is not the case where any notice has to be given for his removal or an order has to be passed for his removal. This Section 58 of the Act, 1993, has totally been misconstrued, misunderstood and incorrectly applied by the Sarpanch as well as respondent No.1. On receipt of this information from the Gram Panchayat by the concerned member, he has right to raise a dispute and if this dispute is raised within stipulated period as provided, it has to be decided by the competent authority. What competent authority to decide under this provision is whether it is a case where this member concerned absented himself without any leave or that though he absented himself without any leave but a cogent and justified explanation has ben furnished and in that case his office shall not be taken to be vacant and automatic ceasing of the person as a member of the Gram Panchayat shall be revoked and he will continue to be a member of the Gram Panchayat. The decision given by the competent authority under sub-section 2 of Section 58 of the Act, 1993, shall be final. It is true that mere mentioning of wrong provisions in the order or notice or letter will not vitiate it if the powers are traceable under some other provision. Here in this case, the respondent No.1 has also failed to appreciate the provisions of Section 58 of the Act, 1993 in its correct perspective. Adjudication should have been on the dispute, i.e. absence of the member without leave of the Panchayat for four consecutive months from the meetings

thereof and the competent authority has to adjudicate thereupon and then to give decision. That provision as contained in sub-section 2 of Section 58 of the Act, 1993, has not been gone into but only on technical ground whether the Sarpanch has power to remove these members or not, matter has been decided by the respondent No.1.

##. As a result of aforesaid discussion, this special civil application succeeds and the same is allowed and the order of the State Government, dated 18.6.98 is quashed and set aside. The matter is sent back to the competent authority to decide the same afresh. The parties are in agreement that the District Development Officer, District Panchayat, Bhadra, Ahmedabad, is the competent authority to decide the matter on reference made to him under sub-section 2 of Section 58 of the Act, 1993. This decision has to be given within a period of two months from the date of receipt of writ of this order. It is to be mentioned for information of the officer concerned that this Reference is regarding the dispute as to whether the vacancies has occurred or not and for adjudication thereof, the authority has to go on the questions, (i) whether it is a case of voluntary absence without there being any justification for the same of the petitioners for four consecutive months from the meetings of the Gram Panchayat. Where it is case of absence without leave of the members, i.e. petitioners, then to consider whether they have an explanation for this absence and if he is satisfied that explanation furnished is satisfactory, then to pass appropriate order. These are only broad aspects which are being informed to the competent authority, otherwise, it has to decide the matter in accordance with law and consider all other aspects in the matter which are relevant and material for adjudication of this dispute. Rule is made absolute accordingly. The respondent No.5 is directed to pay Rs.2,000/= as costs of this petition to the petitioners.

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(sunil)